fied, is supported by the cases cited by the court. See also *Jackson* v. *Tift,* 15 Ga. 557; *Knowles* v. *Lawton,* 18 Ga. 476; *Northwestern Bank* v. *Stone,* 97 Ia. 183; *Spencer* v. *Harford,* 4 Wend. 381. Given the discharge of the senior mortgage by merger, a subsequent payment of the senior mortgage debt involves an unjust enrichment of the mortgagee. The natural remedy therefor would seem to be restitution to the mortgagor of the money so paid, but in this case the mortgagor seeks to recover his land on the theory of redemption. That accepting subsequent payment of a debt satisfied by foreclosure, or otherwise recognizing its continuing existence, is a waiver by the purchaser of the right to an indefeasible title and a treating of the land as security is sustained by authority. *Williams* v. *Bolt,* 170 Mich. 517; *Lounsbury* v. *Norton,* 59 Conn. 170; *Southard* v. *Pope's Executor, supra.* It would seem, by analogy, that the court is justified in holding that acceptance of payment of the debt discharged by merger, incidental to the foreclosure, has the same effect. It should be noted, however, that where a statutory right of redemption from foreclosure sale exists, the foreclosure is incomplete or inchoate during the period of redemption. It would seem to follow that during this period the purchaser in our case was entitled to receive payment on his senior mortgage and to retain such payment if redemption was ultimately made. But since no redemption was made the foreclosure may be regarded as having been perfected *ab initio,* and the doctrine of merger may be applied as if no period of redemption had intervened.

R. A. F.

LIABILITY OF PUBLIC OFFICER FOR THE LOSS OF PRIVATE FUNDS ENTRUSTED TO HIS KEEPING.—There is much contrariety of decision concerning the liability of public officers for the loss of funds with which they have been entrusted. A recent case illustrates some of the more important phases of the law of such a situation. *People for use of Hoyt et al.* v. *McGrath et al.* (Ill. 1917), 117 N. E. 74. In this case the public brought an action of debt on the official bond of the clerk of court for the use of Hoyt and others. Usees had tendered into court a sum of money which the clerk took under the court's order to receive and hold it, but refused to pay it over to the usees as directed by a later order of the court, claiming the money had been received by him in his individual capacity and had been lost without his fault by the failure of the bank in which it had been deposited. *Held,* that as a public officer is liable as an insurer for private funds received by virtue of his office, the failure of the clerk to pay over the money in question constituted a breach of his official statutory bond.

The public officer, on the theory of the existence of a debtor-creditor relation between the public corporation and the officer with respect to the public funds in his possession, on the ground of public policy, because the loss ocurs by reason of the unauthorized acts of the officer, as for example, the unauthorized deposit of public funds in a bank which later fails, or on account of the language of the bond or of the statute defining the duties of the officer, is generally held absolutely liable as an insurer for the safety of

public funds entrusted to him. *Fairchild* v. *Hedges,* 14 Wash. 117; *County of Mecklenburg* v. *Beales,* 111 Va. 691, 36 L. R. A. (N. S.) 285; *Northern Pacific Ry. Co.* v. *Owens,* 86 Minn. 188; *State* v. *Bobleter,* 83 Minn. 479; *Estate of Ramsay* v. *People,* 197 Ill. 572, 90 Am. St. Rep. 177. To this rule of liability exceptions have generally been made of cases where the funds have been lost without the officer's fault, solely by act of God or the public enemy, *United States* v. *Thomas,* 15 Wall. 337 (act of public enemy); *Thompson* v. *Board of Trustees,* 30 Ill. 99 (dicta); *State* v. *Lee,* 72 Miss. 281 (dicta); *Maloy* v. *Board of County Commissioners,* 10 N. Mex. 638. A few cases refuse to make even these exceptions. *Havens* v. *Lathene,* 75 N. Car. 505; *State* v. *Walsen,* 17 Colo. 170. In some states, however, the rule is established that the officer having custody of public moneys is relieved from responsibility for the loss of funds which he has exercised due care and diligence to preserve. *Livingston* v. *Woods,* 20 Mont. 91; *State* v. *Copeland,* 96 Tenn. 296; *State* v. *Gramm,* 7 Wyo. 329. This is clearly the minority rule.

The case noted is of especial interest because the funds in question were private, not public, funds. Some few courts have drawn a distinction in cases of this sort between public and private funds, and hold the officer liable as a bailee for hire in event of the loss of funds of the latter class. *Gartley* v. *People,* 28 Colo. 227; *People* v. *Faulkner,* 107 N. Y. 477. The reason sometimes offered for such distinction is that as the public corporation is not liable for the loss of funds where there is no negligence, so the officer, the agent of the public corporation, ought not to be. It is frequently unsafe to apply the analogy of agency in cases involving officers. Officers are frequently liable for injury or loss when the public corporation which he serves is not liable. So the reason offered is not convincing. In *People* v. *Faulkner, supra,* the reason suggested for the distinction between public and private funds is the greater degree of watchfulness and scrutiny which the owner of private funds gives to the acts of an officer who has custody of his funds. This reason is not very convincing, and it seems that the attempted distinction might well be disregarded and the officer held to the same liability for loss of private funds and for the loss of those of the public. In the great mass of cases involving liability of the officer for loss of funds without his fault the distinction has not been raised. *Shaw* v. *Bauman,* 34 Ohio St. 25; *Smith* v. *Patton,* 131 N. Car. 396; *Phillips* v. *Lamar,* 27 Ga. 228.

G. S.

EXECUTION SALES AS PREFERENTIAL TRANSFERS IN BANKRUPTCY.—In the recent case of *Golden Hill Distilling Co.* v. *Logue,* 243 Fed. 342, the Circuit Court of Appeals for the Sixth Circuit holds that a "creditor who recovers a judgment, by consent or *in invitum,* and by execution sale collects his money within four months preceding bankruptcy, and with reasonable cause to believe [that a preference would thereby be effected] receives a voidable preference, which he must repay to the trustee."

This question is one that has vexed the bankruptcy courts ever since the Supreme Court of the United States in *Clarke* v. *Larremore,* 188 U. S. 486,